IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 9TH NOVEMBER 2006 / 18TH KARTHIKA 1928

MACA.No. 713 of 2005()

(OPMV..997/1998 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, PUNALUR)

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APPELLANT/THIRD RESPONDENT:

THE BRANCH MANAGER, NATIONAL INSURANCE
COMPANY LTD., BRANCH OFFICE, KOTTARAKKARA.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS/CLAIMANT & RESPONDENTS 1 AND 2:

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1. SAINUDEEN, S/O. ABDULKATIM RAVUTHER,
SALAM MANZIL, KOCHALUMOODU, VILAYANTHOOR MURI,
UMMANNOOR VILLAGE, KKOTTARAKKARA TALUK.

2. ASSANARUKUNJU, S/O. THAMPI RAWTHER,
BUNGLAVIL PUTHEN VEEDU, ODANAVATTOM,
KOTTARAKKARA.

3. SHAHUL HAMEED, S/O. ABDUL KARM,
POIKAVILA PUTHEN VEEDU, VILAYANTHOOR,
ODANAVATTOM P.O., KOTTARAKKARA.

R2 BY ADV. SRI.MANOJ RAMASWAMY
R3 BY ADV.SRI.PREMCHAND R.NAIR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD

ON 09/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

EXHIBIT FOR THE APPELLANT(3RD RESPONDENT IN OP(MV)NO.997/98):

EXT.R1 -POLICY SCHEDULE (POLICY NO.570503/97/6301490) FOR THE PERIOD FROM 3-8-1997 TO 2-8-1998)(MARKED AS PER ORDER DT.9-11-2006 IN I.A.2173/2006 IN MACA.713/2005).

-TRUE COPY-

P.S. TO JUDGE.

THOTTATHIL B. RADHAKRISHNAN, J.

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M.A.C.A.No.713 OF 2005

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Dated this the 9th day of November, 2006.

JUDGMENT

This appeal is by the insurance company which stands directed by the Tribunal to satisfy an award.

2. The claimant sued by contending that while awaiting transport, he was permitted to travel by the goods vehicle in question, following his request in that regard. He, thereafter, met with the accident resulting in injuries to him. The Tribunal found that he is entitled to compensation and that the driver had been negligent in driving the vehicle.

3. Holding that there is a valid insurance, the insurer has been mulcted with the responsibility to satisfy the award. The learned counsel for the appellant-insurer is right in pointing out that apart from the fact that Ext.R1 policy being only an Act only policy, the law relating to motor vehicles contained in the Motor Vehicles Act does not

permit the carrying of passengers in a goods carrier and therefore, even if the insurer had issued a comprehensive policy, any loss or damage to a passenger in a goods vehicle would not be covered as any such coverage will be unlawful since what would be covered would be an unauthorised act which would be in violation of the statute. This is plainly because, though the employees in the goods carriage will be within the cabin of the carrier, no passenger is permissible in a goods carriage.

4. In the aforesaid circumstances, the impugned award as against the appellant-insurer is unsustainable. The same is vacated and it is directed that the award will be satisfied by respondents 1 and 2 in the claim petition jointly and severally.

The appeal is allowed in the above terms. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-